

## INTRADEPARTMENTAL CORRESPONDENCE

April 13, 2020  
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**TO:** The Honorable Board of Police Commissioners

**FROM:** Chief of Police

**SUBJECT:** CATEGORICAL USE OF FORCE FID NO. 029-19

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Honorable Members:

The following is my review, analysis and findings for the Use of Deadly Force (UODF), Force Investigation Division (FID) No. 029-19. A Use of Force Review Board (UOFRB) was convened on this matter on March 23, 2020. In this case, the recommended findings were unanimous, with the exception of a minority opinion rendered regarding the Tactics findings for Officer J. Menier, Serial No. 42283, 77<sup>th</sup> Street Patrol Division.

I have carefully weighed each opinion, considered the case in its entirety, and adopted the unanimous recommendations regarding Officer Porter and the minority opinion regarding Officer Menier's tactics. I hereby submit my findings in accordance with Police Commission policy.

### SUMMARY<sup>1</sup>

On June 15, 2019, at approximately 1436 hours, Communications Division (CD) broadcast the first of two radio calls for an Assault with a Deadly Weapon (ADW), located at Slauson Avenue and Budlong Avenue. The information broadcast stated the suspect, later identified as C. Avelar, was *wearing blue jeans* and was *armed with a large machete knife*. Avelar's location was later updated and CD broadcast that he was wearing *black gloves, gray shirt, black pants, carrying a black backpack*, and was walking from *The Home Depot* toward the *McDonald's*. Both businesses were located in the same large and heavily populated commercial business center.<sup>2</sup>

At approximately 1437 hours, the radio call was assigned to Officers A. Porter, Serial No. 27243, 77<sup>th</sup> Patrol Division, and Menier, who were in full uniform, driving a marked black and white police vehicle.<sup>3</sup> Immediately after the broadcast, Sergeant I. Ward, Serial No. 34675, 77<sup>th</sup> Street Patrol Division, advised CD he would be responding to the radio call as well.

<sup>1</sup> The summary and the investigation completed by FID for this incident have been provided to the Board of Police Commissioners.

<sup>2</sup> The McDonald's restaurant was located at 1900 West Slauson Avenue.

<sup>3</sup> Officer Porter and Menier had worked together on one prior occasion at the Front Desk of 77<sup>th</sup> Community Police Station (CPS).

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According to Officer Porter, before beginning their shift, Officers Porter and Menier discussed *tactics, contact and cover roles, lethal and less lethal roles, and equipment carried, such as primary duty weapons*. The officers also engaged in a discussion regarding physical fitness during which Officer Menier advised Officer Porter that he was *a runner* and Officer Porter stated to Officer Menier that *he's been working out and that he's trying to get back into shape*. Officer Porter stated that *since he was driving, more than likely he would be the contact officer and would be less than lethal*, while Officer Menier would be *cover and lethal*.

The FID investigation revealed that Avelar, unbeknownst to Officers Porter and Menier and prior to their arrival, entered The Home Depot, selected a machete off of a shelf, and walked past cash registers, out of the store without paying for the machete.<sup>4</sup> Shortly after, Avelar approached a male, S. Avelar (no relation to the suspect) and stated, "I'm going to kill you," while waving the machete at him.<sup>5</sup>

According to Officer Porter, while driving Code Three to the initial broadcast location of Budlong Avenue and Slauson Avenue, Officer Menier read the comments of the radio call to him and the officers discussed who would provide *cover and contact* and who would utilize *lethal and less than lethal* force. Officer Porter stated that he *would be less than lethal*, while Officer Menier would be *lethal*. Shortly after, a second CD broadcast indicated that Avelar was walking towards the *McDonald's* from *The Home Depot*. Officer Porter initially believed they had more *time and distance* to come up with *additional planning*, but because the updated information placed Avelar closer to their position than the original location, they did not have as much time to discuss their tactical approach. Due to the nature of the call, Officer Porter believed there was an *ADW suspect with a knife and a victim somewhere nearby*.

According to Officer Menier, as they *entered the shopping center to look for Avelar around the McDonald's*, he and Officer Porter discussed that Officer Menier would be *contact officer and lethal and that Officer Porter would be the cover officer and less lethal equipped with the TASER*.

According to Officer Porter, when they arrived at the business complex and in close proximity to the location of the call, Officer Menier broadcast that they were *Code Six prior to turning into the lot*. He and Officer Menier received additional information which indicated that Avelar was *at the McDonald's* carrying a *black backpack* wearing a *gray shirt, and black gloves*. Officer Porter did not initially see *anybody fitting the description* of Avelar. Officer Porter advised Officer Menier that he observed citizens looking towards *Ruthelen Street and Slauson Avenue*, which was a *driveway entrance with a tri-light signal between the Pollo Campero restaurant<sup>6</sup> and the McDonald's*. Officer Porter *kind of crept off eastbound* while verbally *communicating* with Officer Menier.<sup>7</sup> Officer Porter asked Officer Menier, "Do you see him?" and if he was able to see anyone matching Avelar's description in the area. Officer Porter then

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<sup>4</sup> The FID investigation revealed the item was a Fiskars brand machete, twenty- two inches in length.

<sup>5</sup> Crime reports were completed for each incident by responding officers after Avelar was taken into police custody.

<sup>6</sup> Pollo Campero located at 1890 W. Slauson Avenue.

<sup>7</sup> Officer Porter's reference to "creeping" was his description of his slow speed driving. The officers were still inside their police vehicle as Officer Porter drove slowly looking for the suspect.

observed *people looking in a northeasterly direction towards Pollo Campero and Ruthelen Street*. Officer Porter observed a crowd forming in the business parking lot, directing him towards Avelar who was walking into the exit of the Pollo Campero drive-through.

According to Officer Porter, after passing the McDonald's restaurant, *all of a sudden*, he observed Avelar with a *black backpack, gray shirt, and gloves as he glanced toward us*. Officer Porter believed that based on the descriptions provided by CD, Avelar was the ADW suspect.

While driving, Officer Porter could see Avelar *at an angle*, but because Officer Porter was *in the police car and restricted on movement*, he could see only Avelar's *upper trunk and not his arms or hands*. Officer Porter observed Avelar *holding something* and thought *he had the machete*. Officer Porter repositioned his police vehicle and drove towards and entered the exit of the drive-through to get a *better angle* of Avelar and his *hands*.

**Note:** At about the time Officers Porter and Menier entered the drive-through exit, the FID investigation revealed Sergeant D. O'Donnell, Serial No. 26243, Command Pilot, and Officer J. Rasool, Serial No. 38523, Tactical Flight Officer (TFO), Air Support Division (ASD), arrived on scene.

According to Officer Porter, Avelar looked over his shoulder in Officers Porter and Menier's direction. Officer Porter was *thinking* Avelar was *trying to get back onto Slauson Avenue*, that he was armed with a *machete*, and was in a *target rich environment*.<sup>8</sup> Officer Porter opined that Avelar was either *trying to go for a victim* or *was trying to change his direction*. Officer Porter believed he could not let Avelar get *out of sight* since Avelar had a *machete*. As he rounded the corner of the drive-through, Officer Porter observed a vehicle at the *drive-through window*, as well as an employee behind the *open window*, and believed Avelar had the ability to take them *hostage*.

During his FID interview, Officer Porter recalled a hostage situation in Van Nuys Division resulting in an Officer Involved Shooting and wanted to prevent that situation from occurring.<sup>9</sup> Officer Porter also considered the sidewalk next to the drive-through which contained numerous pedestrians and had no fence separating either side. Officer Porter considered the International House Pancakes (IHOP) restaurant in his *background* and knew *people were* inside of it as well (**Debriefing Point No. 1 – Tactical Vehicle Deployment**).

According to Officer Menier, as Officer Porter drove into the drive-through, Officer Menier *attempted to open his door to deploy and make contact with Avelar*. However, Officer Porter continued *driving straight* towards Avelar. Officer Menier realized his door was about to make contact with a wall and possibly injure his foot as Officer Porter continued to drive causing Officer Menier to remain inside the police vehicle. Officer Menier stated Officer Porter advised him he was going to utilize a *bumper takedown* to which Officer Menier replied, "Whoa."

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<sup>8</sup> In this context, a "target rich environment" for the suspect meant immediate access to additional victims.

<sup>9</sup> The FID investigation revealed Officer Porter was referencing FID No. 40-18, which occurred on June 16, 2018. During that incident the suspect was armed with a knife and took a victim hostage, who was subsequently killed.

According to Officer Porter, had the drive-through *been clear* and Avelar continued to run, he would have *started broadcasting* and would have attempted to get Avelar's *attention*. However, since Officer Porter could not *see* Avelar's *hands*, Officer Porter stated he chose to utilize his police vehicle to immobilize Avelar without causing serious injuries. Officer Porter stated that he believed the Beanbag Shotgun would be ineffective. Officer Porter did not deploy the Bean Bag Shotgun during this incident. Officer Porter stated he did not intend to utilize deadly force against Avelar and intended to utilize the vehicle as a *less-lethal* force option. Officer Porter *just reacted to how he was trained to immobilize suspects* and did not want Avelar to turn and *raise up the machete*, placing himself or his *partner in danger*.<sup>10</sup> Officer Porter told his partner that he was going to *take him down with the car*. Officer Porter wanted to *take him and knock him down with the car*, so he *wouldn't hurt anyone* and so he could then safely take Avelar into custody. Officer Porter stated he was driving approximately *three to five miles per hour* when he intentionally used his *vehicle as a less than lethal* force option to strike Avelar with the front bumper of his police vehicle. Officer Porter observed Avelar *get up* and run *eastbound (Lethal Use of Force)*.

**Note:** According to the review by FID investigators of the Telematics Report of Officers Porter and Menier's police vehicle, the police vehicle was traveling at 13 miles per hour at 14:39:13 hours. The FID investigation was unable to establish the exact speed of the police vehicle at point of impact.<sup>11</sup>

According to Officer Porter, after Avelar jumped up and ran, Officer Menier initiated a foot pursuit of Avelar. Officer Porter initially began running behind his partner, but was delayed when realized his car door had not shut. Porter returned to the police car long enough to close the door. At that time he resumed running towards Officer Menier and Avelar while maintaining a *visual* on Officer Menier. Officer Porter heard the air unit coming overhead and stated he was *talking to the airship while trying to catch up* to Officer Menier. Officer Porter believed he was approximately *thirty-five to forty-five feet* behind his partner during the foot pursuit.

According to Officer Menier, he thought Officer Porter was going to *create distance*, and tactically *deploy* their police *vehicle* on Avelar so that they could give him verbal *commands*. After their police vehicle made contact with Avelar, Officer Menier exited their police vehicle and initiated a foot pursuit of Avelar. Officer Menier stated that he believed Avelar was *concealing a machete* and *posed direct threat to the driver of a vehicle in the drive-through* as well as the *employee working the drive-through window* of the Pollo Campero.

A review of Officer Porter's Body Worn Video (BWV) showed him reaching for the microphone of his handheld radio, which was attached to his chest above his BWV camera, and a loud feedback noise could be heard (**Chief's Direction**).

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<sup>10</sup> Subject Matter Experts (SME) from the Tactics Training Unit attended the UOFRB and affirmed that the use of a police vehicle as a less-lethal force option is not consistent with Department training.

<sup>11</sup> The Telematics Report for a police vehicle is a recording of information compiled from the GPS and other onboard diagnostics of the vehicle.

According to Officer Porter, he could not maintain a visual of Avelar, but was able to maintain his *visual* of Officer Menier. However, Officer Porter stated a van crossed in front of Officer Menier and Avelar. By the time the van passed, Officer Menier was *on the ground* with Avelar and was taking him into custody. Officer Porter estimated the time he could not see his partner was approximately three to five seconds (**Debriefing Point No. 2 – Separation/Pursuing Armed Suspects**).

**Note:** The FID investigation revealed that Officer Porter was approximately 215 feet from Officer Menier when Officer Menier took Avelar to the ground. Officer Porter arrived next to Officer Menier's location approximately 30 seconds after Officer Menier and Avelar went down to the ground.

According to Officer Menier, while pursuing Avelar, he attempted to communicate with him in both English and Spanish by ordering him to show his hands. Officer Menier stated Avelar did not respond to his commands. Officer Menier utilized his *right, open palm to push the right side of Avelar's back forward*. Officer Menier's push resulted in Avelar being *off balance* and fall to the *ground*. Officer Menier also *lost balance* and fell to the ground, but he was able to *jump up quickly*. Avelar fell *to his stomach initially and then rolled to his back*. Avelar had *both of his arms in front of him*. Officer Menier used his *left knee* to apply bodyweight on Avelar's *right hand*, which was *on his* (Avelar's) *own chest*. Officer Menier then placed his *right knee around Avelar's hip area*. Officer Menier then placed handcuffs on Avelar and sat him up (**Debriefing Point No. 2 – Separation/Pursuing Armed Suspects and Non-Lethal Use of Force**).

According to Officer Porter, he heard the air unit broadcast the foot pursuit over 77<sup>th</sup> Street base frequency. Officer Porter stated he was *not going to tie up the air trying to double or triple broadcast what the airship was putting out*. Officer Porter, at the conclusion of the foot pursuit and after Officer Menier had taken Avelar into custody, utilized his handheld radio and broadcast a request for the air unit to broadcast a Code Four and to advise responding units that Avelar had been taken into custody. Officer Porter also requested a responding unit to secure his police vehicle at the Pollo Campero (**Additional Tactical Debriefing Topic – Foot Pursuit Broadcast**).

**Note:** The FID investigation revealed that during the foot pursuit, Sergeant Ward advised the Radio Transmissions Operator (RTO) to leave the frequency clear for the air unit.

Officers A. Rossello, Serial No. 43151, and P. Wellman, Serial No. 42641, Unit 12A67, C. Tovar, Serial No. 43384, and P. Navarro, Serial No. 38057, Unit 12X58, and E. Hernandez, Serial No. 41767, and T. Caceres, Serial No. 42968, Unit 12A51, 77<sup>th</sup> Street Patrol Division, responded to the radio call after the application of lethal and non-lethal force occurred.

According to Officer Porter, Sergeant Ward arrived at scene. Officer Porter gave a spontaneous statement to Sergeant Ward, stating that Officer Porter *made contact with the suspect*. Officer Porter also advised that his police vehicle was at the Pollo *Campero* restaurant and that it *may have to stay there*.

According to Sergeant Ward, Officer Porter approached him *very closely* and said *something to the effect of* that Officer Porter had utilized his police vehicle. Sergeant Ward asked Officer Porter to *clarify* what he meant. Sergeant Ward recalled that Officer Porter stated he had utilized a “front bumper takedown.” Sergeant Ward then assigned officers to request a Los Angeles Fire Department (LAFD) Rescue Ambulance (RA) to respond for Avelar. While this discussion was in progress, Sergeant Ward heard Officer Menier begin to *rehash parts of the incident*. Sergeant Ward could not tell what exactly Officer Menier was talking about, but could tell he was *starting* to discuss the incident. Sergeant Ward *immediately advised* Officer Menier to *stop talking about the incident (Command and Control)*.

Sergeant S. Vera, Serial No. 25767, 77<sup>th</sup> Street Patrol Division, arrived at scene shortly after Sergeant Ward.

According to Sergeant Ward, he advised Sergeant Vera of Officer Porter’s statements. Sergeant Ward suggested to Sergeant Vera that the incident could possibly be a *categorical* incident and that they *should separate the officers until they find out for sure if it’s a* Categorical Use of Force (CUOF). Sergeant Ward ordered Officers Porter and Menier not to discuss the incident. A citizen walked up to nearby officers wanting to report that Avelar was the suspect of the Assault with a Deadly Weapon occurrence. Simultaneously, a loss prevention employee from The Home Depot also approached them, wanting to report a burglary for Avelar taking the machete. Sergeant Ward coordinated with officers who were at scene to complete reports for each victim.

Sergeant Ward assigned officers to take custody of Avelar so Officers Porter and Menier could be separated and monitored.<sup>12</sup> Sergeant Ward confirmed with the air unit that Officer Porter’s police vehicle was secured. Sergeant Ward left Officers Porter and Menier with Sergeant Vera to maintain monitoring while he (Sergeant Ward) went to check the officers Digital In-Car Video System (DICVS) to verify if the incident was indeed a CUOF. While at the police vehicle, officers had identified what appeared to be a jacket with the handle of a machete sticking out of it. The item was in the bushes of the Pollo Campero drive-through, on the north side **(Command and Control)**.

According to Sergeant Ward, once he reviewed Officers Porter and Menier’s DICVS, he confirmed the incident was a CUOF. Sergeant Ward telephonically notified the watch commander, Sergeant A. Plummer, Serial No. 33575, 77<sup>th</sup> Street Patrol Division, of the CUOF.

Sergeant A. Gluth, Serial No. 38569, 77<sup>th</sup> Street Patrol Division, arrived shortly after and was ordered by Sergeant Ward to monitor, transport, and admonish Officer Porter. Sergeant Ward directed Sergeant Vera to monitor, transport, and admonish Officer Menier.

Personnel from the LAFD arrived and transported Avelar to California Hospital Medical Center where he was cleared for booking. Officers Hernandez and Caceres accompanied Avelar during transport.

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<sup>12</sup> Sergeant Ward assigned Officers Hernandez and Caceres to take custody of Avelar.



## **FINDINGS**

**Tactics** – Administrative Disapproval, Officers Porter and Menier.

**Non-Lethal Use of Force** – In Policy, No Further Action, Officer Menier.

**Lethal Use of Force** – Administrative Disapproval, Out of Policy, Officer Porter.

## **ANALYSIS<sup>13</sup>**

### **Detention**

Officers Porter and Menier responded to a radio call of an Assault with a Deadly Weapon (ADW) suspect armed with a machete. Officers Porter and Menier arrived at scene and located Avelar walking into the drive-through exit of a restaurant. Officer Porter drove towards Avelar and struck him with the front bumper of the police vehicle, resulting in a Use of Lethal Force. Upon contact with the front bumper of the police vehicle, Avelar was knocked to the ground. Avelar rose to his feet and began running through the parking lot as Officers Menier and Porter initiated a foot pursuit. Officer Menier utilized Non-Lethal Force to detain Avelar. The reason for the officers' detention of Avelar was within Department policies and procedures.

### **TACTICS**

Department policy relative to a Tactical Debrief is: *"The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance."*

Department policy relative to Administrative Disapproval is: *"A finding, supported by a preponderance of the evidence that the tactics employed during a CUOF incident unjustifiably and substantially deviated from approved Department tactical training" (Los Angeles Police Department Manual, Volume 3, Section 792.05).*

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

### **Tactical De-Escalation**

*Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

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<sup>13</sup> The analysis reflects my recommendations as supported by the preponderance of the evidence established by the investigation.

Tactical De-Escalation Techniques

- *Planning*
- *Assessment*
- *Time*
- *Redeployment and/or Containment*
- *Other Resources*
- *Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)*

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

**Planning** – Before beginning their shift, Officers Porter and Menier discussed tactics, contact and cover roles, lethal and less lethal roles, equipment carried such as primary duty weapons. They also discussed physical fitness during which Officer Porter stated to Officer Menier that he had been working out and he was trying to get back into shape. Officer Menier advised Officer Porter that he was a runner. While enroute to the radio call, Officers Porter and Menier discussed that Officer Porter would be the cover officer and less than lethal, while Officer Menier would be the contact officer and lethal. Once at the location of the incident, Officers Porter and Menier became reactionary and did not continue to communicate to each other a specific plan to handle the detention of Avelar. This incident would have benefitted from additional planning once the officers arrived at scene.

**Assessment** – Based on the nature of the radio call, Officers Porter and Menier believed there was a victim of an Assault with a Deadly Weapon nearby. They observed a crowd forming in the business parking lot, which was directing officers towards Avelar who was walking into the exit of the Pollo Campero restaurant drive-through. Officer Porter assessed the scene and observed the location was what Officer Porter described as a “target rich environment” in that the suspect had immediate access to additional victims. Officer Porter believed he could not let Avelar get out of sight since Avelar was in possession of a machete. As he drove his police vehicle and rounded the corner of the drive-through, Officer Porter observed another vehicle at the drive-through window, as well as an employee behind the open window and believed Avelar had the ability to take them hostage. Officer Porter also assessed the area of the sidewalk next to the drive-through, which contained numerous pedestrians and had no fence separating either side. Officer Porter considered the IHOP restaurant in his background and knew people were inside of it as well.

After Officer Porter used his police vehicle to knock down Avelar, both Officers Porter and Menier assessed that Avelar ran on foot from the location. Both officers engaged in foot pursuit of Avelar. Officer Menier, having discussed physical fitness and abilities with Officer Porter, continued in foot pursuit of Avelar without requisite consideration of Officer Porter, who was trailing behind him. At the termination of the foot pursuit, Officer Menier assessed Avelar’s actions and utilized non-lethal force to take him into custody.



**Time** – Officers Porter and Menier initially approached the location in a slow manner, attempting to determine the exact location of Avelar. Upon seeing the crowd of people following and pointing to Avelar, Officer Porter accelerated his police vehicle and drove towards the drive-through. After seeing Avelar walking in the direction of the vehicles at the drive-through window, as well as the employee at the open window, Officer Porter stated he accelerated his police vehicle towards Avelar to prevent Avelar from causing harm or taking a hostage.

The UOFRB noted that, although there was information that Avelar was armed from the radio broadcast, neither officer observed a weapon in Avelar's hands at this time. The officers had not yet located a victim and had not confirmed Avelar was the suspect. The UOFRB noted there was no other evidence yet known to the officers which would require a rushed response into the area. Officer Porter, by accelerating their police vehicle into the area driving the wrong way in the drive-through and into close proximity of Avelar, reduced the available time to Officers Porter and Menier.

**Redeployment and/or Containment** – Officers Porter and Menier observed Avelar walking through the drive-through and opted for immediate engagement versus redeployment or containment. Officer Porter drove in the opposite direction of the drive-through and observed that he and Officer Menier could not exit the area in their police vehicle due to other vehicles in the drive-through. Officer Porter, by placing their police vehicle in the confined area near the restaurant, missed an opportunity to redeploy on Avelar. With the belief that Avelar was potentially armed with a weapon, Officers Porter and Menier, while engaging in a foot pursuit, should have considered setting up containment.

Due to the rapid movement of Avelar away from the initial location of his contact with the officers and their belief that Avelar was armed with a weapon, it is understandable that the officers engaged in foot pursuit.

**Other Resources** – Officers Porter and Menier utilized the air unit, albeit without stated coordination, as an additional resource during the incident and relied on the air unit to broadcast their foot pursuit. Officer Porter also requested the air unit broadcast a Code Four once Avelar was taken into custody, as well as broadcast a request for an additional responding unit to secure the officers' police vehicle. Due to rapid escalation of the incident by Avelar and his running away from the officers, Officers Porter and Menier had limited additional resources available to them.

The UOFRB noted that Officer Porter made a statement that available less lethal weapons, such as the Beanbag Shotgun, would not be effective on armed suspects. However, the UOFRB also noted the amount of less lethal force options available to Officer Porter which he did not utilize or attempt to utilize during the incident. Instead of attempting to utilize additional force options, or call for additional resources, Officer Porter utilized his police vehicle to strike Avelar. Although this incident was unfolding in front of the officers, it would have been preferable for Officer Porter to initiate the response of additional resources or alternative force options in an attempt to resolve the incident without the use of Lethal Force at that time.

**Lines of Communication** – Officers Porter and Menier discussed their observations with each other while making their way through the parking lot and searching for Avelar. As Officer Porter was directed to Avelar by people at scene, Officer Porter drove the wrong way into the exit of the drive-through. Officer Menier partially opened his passenger side door in anticipation of Officer Porter stopping the police vehicle. Instead of stopping the police vehicle, Officer Porter advised Officer Menier that he was going to strike Avelar with the police vehicle just prior to striking Avelar with the police car. Officer Porter did not communicate his intentions to approach or strike Avelar with the police vehicle with Officer Menier prior to doing so. While in foot pursuit, Officer Menier attempted to communicate with Avelar in both English and Spanish. Officer Menier also continued to listen and communicate with Avelar during his arrest.

While the UOFRB noted Officers Porter and Menier had communicated thoroughly while enroute to the call, their communication with each other ceased during their approach and initial contact with Avelar. The officers also did not communicate during their foot pursuit or apprehension of Avelar. The UOFRB determined, and I concur, the officers should have continued communicating with each other throughout the incident. Their lack of communication caused the incident to be rushed and opportunities for de-escalation missed. Although Officers Porter and Menier had discussed contact and cover roles prior to arriving at the scene of the radio call, upon entering the commercial parking lot their communication with each other broke down. This was reflected when Officer Menier stated he was unaware Officer Porter was going to utilize the front bumper of their police vehicle to strike Avelar as he (Officer Menier) was planning to open his passenger door to exit the police vehicle. Instead, Officer Porter quickly turned into the exit of the drive-through almost causing Officer Menier's leg to be caught between the door panel of the police vehicle and a wall in the drive-through. Additionally, their lack of communication during their foot pursuit and apprehension of Avelar was further hampered by Officer Porter briefly returning to the police vehicle to close his door at the initiation of the foot pursuit. Further, Officer Porter was not physically able to keep pace with Officer Menier during the foot pursuit. Both factors contributed to a subsequent separation between Officers Porter and Menier. This incident specifically would have benefitted from additional communication between Officers Porter and Menier after Officer Porter's decision to drive the wrong way into the drive-through exit.

During the review of the incident, the following Debriefing Topics were noted:

**Debriefing Point No. 1 Tactical Vehicle Deployment (Substantial Deviation – Officer Porter)**

*Officers must approach every contact with officer safety in mind. Complacency, overconfidence, poor planning or inappropriate positioning can leave officers vulnerable to attack (California Commission on Peace Officer Standards and Training, Learning Domain 21).*

The investigation revealed Officer Porter deployed his vehicle in a tactically disadvantageous position.

The UOFRB noted that Officer Porter positioned the police vehicle around the corner of a building and into the exit of a drive-through. This placement of the police vehicle did not provide other means of ingress or egress and thus, significantly limited alternative tactical options had Avelar turned around and charged their police vehicle. Officer Menier was placed in a tactically disadvantageous position as he attempted to exit his police vehicle to contact Avelar and at one point, Officer Menier was unable to fully open his door due to Officer Porter's placement of the police vehicle in close proximity to the drive-through wall. Officer Porter did not discuss his vehicle placement with Officer Menier at any point prior to placing them in this tactically disadvantageous position. The UOFRB noted that there was no apparent reason for causing Officer Porter to rush into the location of the incident.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that Officer Porter's actions placed himself and Officer Menier in unnecessary danger and substantially, and unjustifiably, deviated from approved Department tactical training. I will direct this to be a topic of discussion during the Tactical Debrief.

**Debriefing Point No. 2 Separation/Pursuing Armed Suspects (Substantial Deviation – Officers Porter and Menier)**

*Separation (Split Up): Separation occurs whenever the distance between the two officers is so great that one cannot render aid to the other when confronted by the suspect or barriers exist that would unreasonably delay the partner officer from being able to render aid.*

*Note: While in containment mode, partner officers may separate a reasonable distance for the limited purpose of setting up a perimeter, as long as they have line of sight with each other. When separated, officers should not normally transition back into apprehension mode and attempt to take the suspect into custody alone.*

*Pursuing Armed Suspects: When pursuing a suspect believed to be armed, officers should generally do so in containment mode while considering the available tactical advantages, including cover and concealment where available. The goal is to maintain observation of the suspect and the tactical advantage while coordinating the response of additional units and other resources for a perimeter with the objective of containing the suspect and taking him into custody safely. The decision to pursue an armed suspect in apprehension mode may be appropriate when the suspect is at a tactical disadvantage and an arrest can be accomplished with limited risk to officers or innocent parties (Los Angeles Police Department Use of Force-Tactics Directive No. 3.2, Foot Pursuit Concepts, October 2013).*

Officer Porter trailed Officer Menier on foot as Officer Menier actively engaged in a foot pursuit of a possibly armed suspect in apprehension mode. Officer Porter was unable to render immediate aid to Officer Menier.

In this case, Officer Menier was unaware Officer Porter was going to utilize the front bumper of the police vehicle to strike Avelar in an attempt to conduct a takedown of Avelar. Officer Menier stated that he believed Officer Porter was going to create distance and they were going to

deploy out of their police vehicle and give Avelar verbal commands. After Avelar had been struck by the police vehicle, Avelar fell to the ground, jumped to his feet and fled on foot in the opposite direction of the officers. Officer Menier, believing the area was heavily occupied by pedestrians, initiated a foot pursuit of Avelar. Officer Menier believed Avelar was concealing a machete and posed a direct threat to the driver of a nearby vehicle waiting in the drive-through and an employee working the drive-through window of the Pollo Campero restaurant. While Officer Menier pursued Avelar on foot, Officer Porter was briefly delayed as he returned to the police vehicle to close the door. Officer Porter who was already delayed was not able to keep up with Officer Menier's pace. Officer Menier, having previously discussed physical fitness and abilities with Officer Porter, continued to engage in a foot pursuit of Avelar without requisite consideration of Officer Porter, who was trailing behind him. Officer Menier remained focused on apprehending Avelar to deny him access to potential additional victims in the nearby parking areas or businesses.

The UOFRB also noted that Officer Porter was approximately 215 feet from Officer Menier when Officer Menier took Avelar to the ground. Officer Porter could not render immediate aid to Officer Menier from his position during the foot pursuit as Officer Porter arrived next to Officer Menier approximately 30 seconds after Officer Menier and Avelar went down to the ground.

A review of Officer Porters' BWV captured that as Officer Menier was handcuffing Avelar, Officer Porter slowed his pace to a walk prior to reaching Officer Menier's location. Officer Menier had already been engaged in a non-lethal use of force with Avelar.

The UOFRB majority considered many aspects of the incident and noted Officers Porter and Menier's knowledge of the air unit being present and their capabilities regarding directing additional units if aid was needed. Additionally, the UOFRB noted the complexity of the parking lot and what Officer Porter described as a "target rich environment." The UOFRB majority also noted the position Officer Menier was placed in due to Officer Porter's prior actions and placement of their police vehicle. Officer Menier intended to utilize other means to contact Avelar and deploy from a position further back from Avelar. The actions of Officer Porter in rushing the incident and Avelar's flight both created a tactically dynamic situation which led Officer Menier to pursue and ultimately apprehend Avelar, who he believed to be an armed ADW suspect.

The UOFRB minority reviewed the same circumstances and came to a different conclusion. The UOFRB minority reviewed the statements of Officer Menier, as well as the FID investigation, and believed Officer Menier did not thoroughly discuss foot pursuit tactics with Officer Porter prior to the initiation of the foot pursuit. The officers also did not discuss what roles each would take during a foot pursuit. The UOFRB minority believed Officer Menier substantially deviated from Department approved tactics when he chose to pursue Avelar in apprehension mode due to Officer Menier's knowledge of Avelar being armed. The UOFRB minority preferred that Officer Menier had utilized the air unit to set up containment on Avelar.

A review of Officer Menier's BWV captured that as Officer Menier closed the distance on Avelar, Avelar was not holding a weapon in his hands thus, he no longer posed an immediate threat to the public. The incident, as it unfolded, did not warrant Officer Menier to actively engage in a foot pursuit of Avelar in the absence of Officer Porter.

Based on the totality of the circumstances, the UOFRB minority determined, and I concur, that Officer Menier should not have separated from Officer Porter during his foot pursuit of Avelar. In this case it was Officer Menier's responsibility not to out run Officer Porter. It is my expectation that as the primary officer engaged in the foot pursuit of a suspect, Officer Menier should have maintained awareness of Officer Porter's location and inability to render immediate aid, if necessary. Officer Menier's actions were unreasonable and a substantial deviation, without justification, from approved Department tactical training. In an effort to improve future performance, I will direct this to be a topic of discussion during the Tactical Debrief.

Additionally, based on the totality of the circumstances, the UOFRB determined, and I concur, that Officer Porter, as the senior officer, should have communicated to his partner that he was not able to see his partner. Without this communication, Officer Menier was unaware that he was over 200 feet ahead of his partner and not visible to his partner. The failure to communicate between the officers resulted in separation and unnecessary risk to both officers.

In this case, both officers shared responsibility to keep each other apprised of their location and maintain visual contact with each other. The failure of the officers to maintain an awareness of each other's location placed Officer Menier at a position of disadvantage as he remained in apprehension mode and engaged in a Non-Lethal Use of Force by himself with Avelar. During Officer Menier's handcuffing of Avelar, BWV captured Officer Porter slowing his pace to a walk prior to reaching Officer Menier's location. It is my expectation, that as the senior officer engaged in the foot pursuit of a suspect, Officer Porter should have maintained communication and exercised control to ensure he did not lose contact with his partner. During this foot pursuit, both officers were separated to the point where neither officer could provide immediate aid to assist each other. Officer Porter's actions were unreasonable and a substantial deviation, without justification, from approved Department tactical training. In an effort to improve future performance, I will direct this to be a topic of discussion during the Tactical Debrief.

### **Additional Tactical Debrief Topics**

**Foot Pursuit Broadcast** – Officers Porter and Menier did not broadcast they were engaged in a foot pursuit, nor did they broadcast additional pertinent information such as a suspect description, direction of travel, or the crime for which the suspect was wanted. The officers relied on the air unit to complete their broadcasts during the foot pursuit. Officer Porter is reminded of the importance of the broadcast for officer safety and that the broadcast is not the responsibility of the air unit, but that of the primary unit and specifically is to be made by the officer in the rear position. Officer Porter is also reminded that the primary responsibility of the air unit is to monitor the overall scene and not have to be focused on one specific aspect, such as broadcasting. I will direct that this be a topic of discussion during the Tactical Debrief.

## **Command and Control**

*Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

*Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (Los Angeles Police Department, Training Bulletin, Volume XLVII Issue 4, July 2018).*

*Line Supervision – Defined. A supervisor who has the specific responsibility of issuing directions and orders to designated subordinates shall be considered as having the duty of line supervisor and shall be held accountable for achieving conformance with the directions and orders that he/she issues (Los Angeles Police Department Manual, Volume 3, Section 135).*

*Incident Commander (IC) – In accordance with Department Policy, the IC sets the objectives, the strategy and directs the tactical response. Directing the tactical response means applying tactics appropriate to the strategy, assigning the right resources and monitoring performance (Supervisor's Field Operations Guide, Volume 2, LAPD Emergency Operations Guide).*

Sergeant Ward broadcast his response to the radio call and was the first supervisor to respond to the location. Upon his arrival, Avelar had already been taken into custody by Officer Menier and Avelar was standing against a nearby wall being monitored by Officers Menier, Rossello, Wellman, Hernandez and Caceres. Sergeant Ward assumed the role of IC and approached Officers Porter and Menier. Officer Porter advised Sergeant Ward that he had utilized his police vehicle to intentionally strike Avelar. Sergeant Ward turned to Sergeant Vera, and notified him of the information. Sergeant Ward then turned back toward Officers Porter and Menier and heard Officer Menier begin to discuss the incident with Officers Rossello, Wellman, Hernandez and Caceres. Sergeant Ward ordered Officer Menier to stop talking to the officers and to not discuss the incident and ordered the officers to request a RA.

Sergeant Ward designated Sergeant Vera to separate and monitor Officers Porter and Menier while he went to verify if Lethal Force was utilized on Avelar. Sergeant Ward walked to



Officers Porter and Menier's police vehicle and checked their DICVS footage. Sergeant Ward determined a CUOF had occurred and directed Sergeant Gluth to monitor, transport, and admonish Officer Porter. Sergeant Ward directed Sergeant Vera to monitor, transport, and admonish Officer Menier. Sergeant Ward telephonically notified Sergeant Plummer that a CUOF incident had occurred. Sergeant Ward ensured Avelar was transported by RA, with non-involved officers to California Hospital Medical Center for medical treatment. Sergeant Ward directed officers to set up a crime scene and ensured Officer Porter's police vehicle and the item which Avelar threw down in the drive-through were monitored by officers until the arrival of FID investigators.

Sergeant Vera was the second supervisor to arrive at scene and met with Sergeant Ward. After being advised of the possible CUOF, he assumed monitoring responsibility of Officer Menier and continued to keep him separated from other officers at scene. Sergeant Vera transported Officer Menier to 77<sup>th</sup> Street CPS, and subsequently took his Public Safety Statement (PSS) and admonished him to not discuss the incident with anyone other than his legal representation or FID investigators. Sergeant Vera continued to monitor Officer Menier until he was relieved by Sergeant J. Rider, Serial No. 39306, 77<sup>th</sup> Street Patrol Division.

Sergeant Gluth was the third supervisor to arrive and took monitoring responsibility of Officer Porter. Sergeant Gluth transported Officer Porter to 77<sup>th</sup> Street CPS, took his PSS, and then admonished him to not discuss the incident. Sergeant Gluth continued to monitor Officer Menier until she was relieved by Sergeant Rider at 77<sup>th</sup> Street CPS.

Sergeant Rider took over monitoring responsibility of Officers Porter and Menier, but maintained their separation. Sergeant Rider was relieved of his duties upon the arrival of FID investigators.

Sergeant Plummer notified the Department Operations Center (DOC) of the CUOF incident.

The UOFRB noted that all of the sergeants met the requirements of supervisors after a CUOF incident. As is expected, the sergeants adhered to their roles as supervisors and each completed their assigned task. The sergeants ensured Post Categorical Procedures were adhered to by admonishing, separating, and monitoring their assigned officer until they were relieved.

The actions of Sergeants Ward, Vera, Gluth, and Rider were consistent with Department supervisor training and my expectations of field supervisors during a critical incident.

The actions of Sergeant Plummer were consistent with Department supervisor training and my expectations of a watch commander during a critical incident.

### **Tactical Debrief**

In conducting an objective assessment of this case, the UOFRB determined, and I concur, that Officer Porter's actions were a substantial deviation, without justification, from Department policy and training, thus requiring a finding of Administrative Disapproval.

In conducting an objective assessment of this case, the UOFRB minority determined, and I concur, that Officer Menier's actions were a substantial deviation, without justification, from approved Department tactical training, thus requiring a finding of Administrative Disapproval.

Each tactical incident also merits a comprehensive briefing. In this case, there were identified areas where improvement could be made. A Tactical Debrief is the appropriate forum for the involved personnel to review the officer's individual actions that took place during this incident.

Therefore, I will direct Officers Porter and Menier attend the Tactical Debrief and that the specific identified topics are discussed.

**Note:** Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force

### **General Training Update (GTU)**

Officers Porter and Menier attended a GTU on July 2, 2019. All mandatory topics were covered for the attendees including Use of Deadly Force.

### **Use of Force – General**

*It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:*

- *Defend themselves;*
- *Defend others;*
- *Effect an arrest or detention;*
- *Prevent escape; or,*
- *Overcome resistance*

*The Department examines reasonableness using Graham v. Connor and from the articulated facts from the perspective of a Los Angeles Police Officer with similar training and experience placed in generally the same set of circumstances. In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:*

- *The seriousness of the crime or suspected offense;*

- *The level of threat or resistance presented by the subject;*
- *Whether the subject was posing an immediate threat to officers or a danger to the community;*
- *The potential for injury to citizens, officers or subjects;*
- *The risk or apparent attempt by the subject to escape;*
- *The conduct of the subject being confronted (as reasonably perceived by the officer at the time);*
- *The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;*
- *The availability of other resources;*
- *The training and experience of the officer;*
- *The proximity or access of weapons to the subject;*
- *Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number officers versus subjects; and,*
- *The environmental factors and/or other exigent circumstances. (Los Angeles Police Department Manual, Volume 1, Section 556.10)*

#### **Non-Lethal Use of Force<sup>14</sup>**

*It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:*

- *Defend themselves;*
- *Defend others;*
- *Effect an arrest or detention;*
- *Prevent escape; or,*
- *Overcome resistance (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

#### **Officer Menier- Bodyweight, Firm Grip**

According to Officer Menier, while engaging in foot pursuit of Avelar, he utilized his right, open palm to push the right side of Avelar's back in a forward direction. Officer Menier's push resulted in Avelar to be off balance and fall to the ground. Officer Menier also lost balance and fell to the ground, but was able to get up quickly. Avelar fell onto his stomach initially and then rolled over onto his back. Avelar had both of his arms out in front of him. Officer Menier used his left knee to apply bodyweight on Avelar's right hand, which was on his (Avelar's) own chest. Officer Menier then placed his right knee around the area of Avelar's hip. Officer Menier utilized both of his hands to apply a firm grip to grab both of Avelar's hands and then added bodyweight to prevent Avelar from escaping. Officer Menier rolled Avelar onto his stomach, placed both of Avelar's hands behind his back, and proceeded to handcuff Avelar.

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<sup>14</sup> Los Angeles Police Department Manual, Volume 1, Section 556.10.

Officer Menier recalled,

*I was able to get within touching distance I believe is the best way to describe it and I used a push to his back to catch him off balance to have him go to the ground... I also lost my balance and went to the ground... I gave a roll to my right side to be able to jump up quickly... And the suspect landed, I believe, on his stomach initially and then rolled to his back.<sup>15</sup>*

*He had both arms in front of him... my left knee was in his chest area pinning down his right hand and also to pin down him from escaping... then my right knee was around his right hip area. I used my knees to—as bodyweight to... hold the suspect.<sup>16</sup>*

*As I grabbed both his front hands with my hands got a firm grip, recollected myself, and then used the body weight to keep control of him so that he wasn't able to run again... I rolled him onto his stomach, got both hands behind his back...<sup>17</sup>*

In this case, the UOFRB conducted a thorough review in evaluating the reasonableness of Officer Menier's Non-Lethal Use of Force. The UOFRB noted that Officer Menier's attempts at de-escalation were thorough as he tried to utilize both English and Spanish commands during his foot pursuit of Avelar. The UOFRB noted Avelar was not cooperative with Officer Menier's continuous commands to submit to arrest. At one point, Avelar attempted to use a shopping cart to physically block Officer Menier's path as Avelar continued to attempt to physically avoid Officer Menier's detention, which ultimately resulted in Officer Menier's use of force. The UOFRB noted Officer Menier's professionalism during the use of force and his calm and respectful tone while communicating with Avelar. The UOFRB also noted Officer Menier's quick response when Avelar stated that he could not breathe, to which Officer Menier responded by immediately placing Avelar into a seated position before ultimately standing him up.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officer Menier's, while faced with similar circumstances, would believe the same applications of Non-Lethal force would be reasonable to overcome Avelar's physical resistance while taking him into custody.

Therefore, I find Officer Menier's Non-Lethal Use of Force to be objectively reasonable and In Policy, No Further Action.

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<sup>15</sup> Officer Menier, Page 12, Lines 4-11.

<sup>16</sup> Officer Menier's 2<sup>nd</sup> Interview, Page 4, Lines 9-11.

<sup>17</sup> Officer Menier's 2<sup>nd</sup> Interview, Page 4, 11-16.

## **Lethal Use of Force**

*Law enforcement officers are authorized to use deadly force to:*

- *Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or,*
- *Prevent a crime where the subject's actions place person(s) in imminent jeopardy of death or serious bodily injury; or,*
- *Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

**Officer Porter – Police Vehicle, traveling approximately 13 miles per hour, in an easterly direction.<sup>18</sup>**

According to Officer Porter, he suddenly saw Avelar but could not see his hands. Officer Porter was thinking that Avelar was still in possession of a machete. Officer Porter stated that he just reacted to how he was trained and did not want Avelar to turn and raise up the machete. Officer Porter observed Avelar heading toward the drive-through and told his partner that he was going to take him down with the car. Officer Porter stated he wanted to utilize his police vehicle as a less lethal impact device to knock Avelar to the ground so he would not hurt anyone and could be safely taken into custody. Officer Porter stated he was driving approximately three to five miles per hour when he used his police vehicle, as what Officer Porter described as a “less than lethal” force option, and struck Avelar with the front bumper of his police vehicle. After making contact with Avelar, Officer Porter observed Avelar fall to the ground, stand up, and run east on foot.

**Note:** According to the review by FID investigators of the Telematics Report of Officers Porter and Menier's police vehicle, the police vehicle was traveling at 13 miles per hour at 14:39:13 hours. The FID investigation was unable to establish the exact speed of the police vehicle at point of impact.

Officer Porter recalled,

*...all of a sudden, I see what appeared to me to be the suspect. I can't see his hands...I'm still thinking that, hey, he has this machete...I just reacted to how I was trained. I didn't want the guy to turn and all of a sudden raise up the machete...<sup>19</sup>*

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<sup>18</sup> The FID investigation revealed the Telematics report indicated Officer Porter's vehicle was traveling at 13 miles per hour.

<sup>19</sup> Officer Porter, Page 10, Lines 14-19 and Page 12, Lines 23-25.

*As he's heading towards the drive-through and I'm coming around in the car. And all of a sudden, I tell my partner—I said, I'm going to take him down with the car. My intentions were to take him and knock him down with the car and, you know, problem solved... He's not going to go toward anyone...he's not going to hurt anybody...we can cuff him.<sup>20</sup>*

*It was like between three to five miles per hour. Just enough to bump him. So, he goes down. I don't see him visually hitting the pavement or anything like that. But, I'm thinking, okay, problem solved... He gets up and he starts running.<sup>21</sup>*

*I used the vehicle as a less than lethal.<sup>22</sup>*

In this case, the UOFRB conducted a thorough review of the investigation and considered several factors in evaluating the reasonableness of Officer Porter's use of lethal force. During their review, the UOFRB took into consideration that Avelar was reportedly an armed subject with a machete, in a crowded parking lot. Prior to the officer's arrival, Avelar reportedly assaulted a citizen in the lot, unbeknownst to the officers. Avelar, at the time of the officers' arrival, was walking into the exit of a fast food drive-through where there were additional citizens in their vehicles and an employee behind the drive-through service window of the restaurant. Due to the nature of the radio call and Avelar walking toward citizens, Officer Porter stated he feared Avelar would potentially cause serious bodily injury or death to unsuspecting victims in the form of taking a hostage. There were no immediate circumstances which supported that Avelar was in the process of taking a hostage. Officer Porter responded by using the front bumper of his police vehicle to strike Avelar, knocking him to the ground. Officer Porter, believing the use of the front bumper of his police vehicle was a use of less lethal force, instead utilized lethal force. The FID investigation was unable to establish the exact speed of the police vehicle at point of impact.

The UOFRB took into consideration that Officers Porter and Menier believed a victim of an assault was nearby and Avelar was the suspect of the assault. The UOFRB also considered the officers' inability to see a weapon in Avelar's possession. The UOFRB noted Officer Porter's opinion that a police vehicle, traveling at a slow speed, could be used as a less-lethal force option. The concept of being able to safely control a motor vehicle while attempting to strike a pedestrian as a means to effect an arrest without causing significant injuries is not compatible with the Department's Use of Force policy. This opinion represented a failure of Officer Porter to understand the differences between the use of lethal and less-lethal force options and their applications, as well as his reluctance to use Department approved less-lethal devices due to his perception of their ineffectiveness. The UOFRB noted that Department personnel are not trained in the use of a police vehicles as a less-lethal impact device.

As such, based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officer Porter, would not reasonably believe that

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<sup>20</sup> Officer Porter, Page 11, Lines 9-16.

<sup>21</sup> Officer Porter, Page 11, Lines 19-24.

<sup>22</sup> Officer Porter, Page 25, Lines 23-25.



the subject's actions presented an imminent threat of death or serious bodily injury and that the Use of Lethal Force would not be objectively reasonable.

Therefore, I have determined that Officer Porter's Lethal Use of Force in this situation was not objectively reasonable or warranted. As such, Officer Porter substantially deviated from Department policy and Department approved training without justification. Therefore, I find Officer Porter's Use of Lethal Force to be Out of Policy, Administrative Disapproval.

#### **Additional/Required Equipment**

**Documentation of Categorical Use of Force** – Sergeants Gluth, and Rider, both noted incorrect dates on page two of their respective Sergeant's Daily Report. This issue was brought to the attention of Captain M. Odle, Serial No. 22369, Commanding Officer, 77<sup>th</sup> Street Patrol Division, who advised that this issue was addressed through divisional training and the generation of a Supervisory Action Item (SAI) with both employees. The Commanding Officer of Operations – South Bureau (OSB) and the Director of the Office of Operations (OO) concurred with this action. As such, I deem no further action is necessary.

**Body Worn Video (BWV)** – Officer Rosello conducted an in-field power off of his BWV device while monitoring Avelar. An analysis by 77<sup>th</sup> Area determined Officer Rosello previously had two incidents in which he failed to notate required information captured on his BWV. This issue was brought to the attention of Captain Odle who advised that this issue was addressed with the issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OSB and the Director of OO concurred with this action. As such, I deem no further action is necessary.

Officer Wellman conducted an in-field power off of his BWV device while monitoring Avelar. An analysis by 77<sup>th</sup> Area determined that Officer Wellman previously had one incident in which he failed to notate required information captured on his BWV. This issue was brought to the attention of Captain Odle, who advised that this issue was addressed with issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OSB and the Director of OO concurred with this action. As such, I deem no further action is necessary.

#### **Audio/Video Recordings**

**Digital In-Car Video System (DICVS)** – Officers Porter and Menier's patrol vehicle was equipped with a DICVS and captured the Lethal Force used against Avelar. The DICVS did not capture Officer Menier's Non-Lethal Use of Force when he took Avelar into custody.

**Body Worn Video (BWV)** – Officers Porter and Menier activated their BWV devices upon the radio call assignment and each captured their respective portions of the incident. Officer Porter's BWV captured the Lethal Force, the foot pursuit, and Avelar being taken into custody. Officer Menier's BWV captured the Lethal Force, the foot pursuit, and Non-Lethal Use of Force.

**Outside Video Surveillance**– Force Investigation Division investigators obtained outside video footage from two sources. The first was The Home Depot's closed-circuit video surveillance,

which captured Avelar inside of the store and outside the entrance where he produced a machete from his waistband. The second source was the McDonald's closed-circuit video surveillance which captured Avelar walking around the parking lot and later walking toward the Pollo Campero restaurant. The footage also captured Officer Porter driving near the Pollo Campero drive-through.

**Chief's Direction** – In its evaluation of this case, the UOFRB identified a need to assess the potential for audio interference caused by the placement of the handheld radio microphone on an officer's uniform. During this incident, Officer Porter secured his handheld radio microphone in close proximity to his BWV camera near the center of his chest. It appeared that on multiple occasions there may have been radio interference which made his radio transmissions by microphone inaudible, posing a possible concern for officer safety. I am directing the Commanding Officer of Information Technology Bureau conduct an assessment of the placement of the radio microphone relative to the BWV device and make appropriate recommendations, if applicable.

Respectfully,

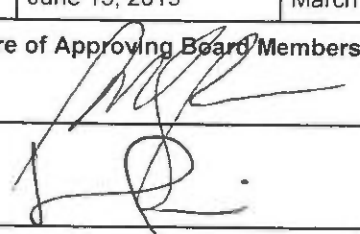



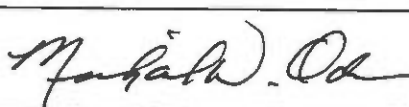
  
MICHEL R. MOORE  
Chief of Police

Date: 4-13-20

LOS ANGELES POLICE DEPARTMENT  
USE OF FORCE REVIEW BOARD REPORT

INC No. 029-19	CF No.	DR No.
Use of Lethal Force		

REVIEW BOARD INFORMATION

Location of Incident 1800 West Slauson Avenue	RD 1233	Date of Incident June 15, 2019	Date and Time of Board Review March 23, 2020 1230 Hours
Chair Assistant Chief B. Girmala, Serial No. 24916	Signature of Approving Board Members:		
Member (Office Representative) Commander M. Rimkunas, Serial No. 32211			
Member (Police Sciences and Training Bureau) Commander R. Flores, Serial No. 30995			
Member (Bureau) Commander A. Labrada, Serial No. 30398			
Member (Peer) Officer G. Mattison, Serial No. 36735			
Presenting Commanding Officer Captain M. Odle, Serial No. 22369			
Notes:			
Additional Considerations:			
Modification to Present Policy, Practices or Training:			
<div style="text-align: right;"> <p>RECEIVED APR 16 2020 OFFICE OF THE INSPECTOR GENERAL</p> <p>RECEIVED POLICE COMMISSION 2020 APR 13 PM 2:28</p> <p>■ COP Date Signed: 4-13-2020 ■ PC Date Submitted: 4-13-2020</p> </div>			

<b>Employee (Last Name, First, Middle)</b> Menier, Jaz		<b>Serial No.</b> 42283	<b>Rank/Class</b> Police Officer II	<b>Incident No.</b> 029-19
<b>Length of Employment</b> 3 years, 8 months		<b>Current Division</b> 77th Street		<b>Time in Current Division</b>

Use of Force Review Board	Chief of Police	Police Commission
<b><u>Tactics</u></b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> Tactical Debrief <b>MAJORITY</b> <input checked="" type="checkbox"/> Administrative Disapproval <b>MINORITY</b>	<b><u>Tactics</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> Tactical Debrief <input checked="" type="checkbox"/> Administrative Disapproval	<b><u>Tactics</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> Tactical Debrief <input type="checkbox"/> Administrative Disapproval
<b><u>Drawing and Exhibiting the Firearm</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Drawing and Exhibiting the Firearm</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Drawing and Exhibiting the Firearm</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b><u>Lethal Use of Force</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Lethal Use of Force</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Lethal Use of Force</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b><u>Less-Lethal Use of Force</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Less-Lethal Use of Force</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Less-Lethal Use of Force</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b><u>Non-Lethal Use of Force</u></b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Non-Lethal Use of Force</u></b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Non-Lethal Use of Force</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b><u>Unintentional Discharge</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)	<b><u>Unintentional Discharge</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)	<b><u>Unintentional Discharge</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)
<b><u>Other Issues</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Other Issues</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Other Issues</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)

**Notes:**

MINORITY: 1 BOARD MEMBER ADMINISTRATIVE DISAPPROVAL

MAJORITY: 4 BOARD MEMBERS TACTICAL DEBRIEF

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<b><u>Final Adjudication for Out of Policy/ Administrative Disapproval Finding</u></b> <input type="checkbox"/> Extensive Retraining <input type="checkbox"/> Notice to Correct Deficiencies <input type="checkbox"/> Personnel Complaint <input type="checkbox"/> Employee's Work History Reviewed	<b>Notes:</b>
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\*A Tactical Debrief shall be conducted for all Categorical Use of Force Incidents.

